

## **EXHIBIT 2**

**ESTIMATED FUNCTIONAL ABILITIES FORM**

The Benefits Center  
PO Box 100158  
Columbia, SC 29202-3158  
Phone: 1-800-858-6843

Fax: 1-800-447-2498



02875000780177001

Please provide an estimate of your patient's functional ability. If for any reason you are having difficulty completing this form, please contact Michael Leding at 1-800-858-6843  
claims owner

Patient Name  
Kelly, Megan L

Claim No.  
1718010

Patient can Lift/carry	Never	Occasional 0-33%	Frequent 34-66%	Continuous 67-100%	Use Hands	Left	Right
1-10 lbs.		<input checked="" type="checkbox"/>			Simple Grasp	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
11-20 lbs.	<input checked="" type="checkbox"/>				Fine Manipulation	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
21-50 lbs.	<input checked="" type="checkbox"/>				Medium Dexterity	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
>50 lbs.	<input checked="" type="checkbox"/>				Power Grip	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
Physical Activities	Never	Occasion 0-33%	Frequent 34-66%	Continuous 67-100%	Bimanual Dexterity	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> N
Bend		<input checked="" type="checkbox"/>			Patient can use feet for repetitive movement for operating foot control	Left <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Right <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
Kneel	<input checked="" type="checkbox"/>						
Crawl	<input checked="" type="checkbox"/>						
Climb Stairs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					
Reach above shoulder		<input checked="" type="checkbox"/>					
Push/Pull 10 lbs.		<input checked="" type="checkbox"/>					

Is your estimated functional capacity based upon:

- ☒ A) Your patient's report  
☐ B) Measured capacity (e.g. exercise testing, pulmonary function testing, or a formal evaluation of physical capacity)  
☒ C) Your clinical experience.

1099-02

(Please See Reverse Side)

Includes 2 Physicians Signatures -  
see next 2 pages

Claimant Name: Megan L Kelly

Claim # 1718010

Unum\_0629



02875000780177002

Please comment on any additional medical and/or non-medical factors that impact your patient's functional ability, including any additional treatment or accommodation which might help improve your patient's ability to function.

PT's job requires handling dangerous chemicals and she is at risk for dropping these chemicals.

#### Current Functional Ability

In an 8 hour workday, what is the maximum number of hours your patient could perform each of these levels of activity (please indicate appropriate number of hours):

8 Hrs.	Sedentary Activity	10 lbs. maximum lifting or carrying articles. Walking/standing on occasion. Sitting 6/8 hours.
___ Hrs.	Light Activity	20 lbs. maximum lifting, carrying 10 lb. articles frequently, most jobs involving standing with a degree of pushing and pulling. Standing 6/8 hours.
___ Hrs.	Medium Activity	50 lbs. maximum lifting with frequent lifting/carrying of up to 25 lbs. Frequent standing and walking.
___ Hrs.	Heavy Activity	100 lbs. maximum lifting, frequent lifting/carrying of up to 50 lbs. Frequent standing and walking.

If you feel your patient needs to alternate activities more frequently than standard breaks (approximately every 2 hours), please provide frequency of breaks and your rationale.

If you list hours in more than one category, we will assume your patient can perform the sum of those hours in a work day. If this is not your intent, please explain.

Given your knowledge of the medical factors impacting your patient's functional ability, at what point in time do you feel that there will be a significant change in functional ability.

Postoperatively

Having completed this form, if you would like to discuss your patient's functional abilities with the UnumProvident medical specialist working with your patient's disability claim, please contact Michael Leding claims specialist.

Date 10/12/06

Physician Signature

Print Name

Phone Number

*Andrew Haskell*  
 Andrew Haskell  
 650 321-4121

Comments:

1089-02

Claimant Name: Megan L Kelly · Claim #: 1718010

Unum\_0630

## **EXHIBIT 3**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION

4 ---000---

5 MEGAN KELLY,

6 Plaintiff,

7 vs.

No. C-07-3002 MMC

8 APPLERA CORPORATION and  
9 DOES 1-20, inclusive,

10 Defendants.  
11 \_\_\_\_\_/

12  
13 DEPOSITION OF GEORGE STEFAN LAZAR

14 VOLUME I

15 (Pages 1 to 249)

16  
17  
18 Taken before ERIN F. FERREYRA

19 CSR No. 12199

20 February 13, 2008



One Kaiser Plaza, Suite 505  
Oakland, California 94612  
510/451-1580 Fax 510/451-3797

Certified Shorthand Reporters

1 Q. Excuse me. I didn't mean to interrupt 00:15:58  
2 you. 00:16:02

3 A. I can tell you generically speaking, 00:16:02  
4 month, year. I can't necessarily tell you exact 00:16:05  
5 dates. 00:16:07

6 Q. And we're going to explore your memory 00:16:08  
7 later. All I want to know right now is what you 00:16:10  
8 told her in the meeting and what she said in the 00:16:12  
9 meeting in terms of those dates. 00:16:14

10 So just tell me to the best of your 00:16:16  
11 recollection what was discussed in that meeting in 00:16:18  
12 terms of the dates of leaving, returning, coming 00:16:20  
13 back and returning again. 00:16:22

14 A. As I remember it, we discussed the fact 00:16:24  
15 that she left on her first leave in July of 2004. 00:16:27  
16 She returned, I believe it was September, was back 00:16:40  
17 to work for approximately one week, ten days, and 00:16:46  
18 then went out on leave again in September of '04. 00:16:51  
19 And she actually returned to work, I believe, as I 00:17:03  
20 remember, in May of 2007. 00:17:08

21 Q. Okay. So other than the -- so have you 00:17:20  
22 told me everything that you remember discussing 00:17:26  
23 with Ms. Lawson with respect to the timing of the 00:17:28  
24 case? 00:17:30

25 A. Yes. 00:17:30

1 A. I don't specifically remember who it was. 03:31:26  
2 Obviously, we discussed it, but I don't remember 03:31:33  
3 who it was. 03:31:40

4 Q. Do you know if you had a doctor's note 03:31:42  
5 specifying the work restrictions that you 03:31:45  
6 described before the break at the time of the 03:31:48  
7 conversation with Mr. Laosiri in January of 2006? 03:31:50

8 A. I did not have one. 03:31:55

9 Q. Do you know if Mr. Laosiri had a doctor's 03:31:58  
10 note specifying work restrictions that you 03:32:01  
11 specified prior to the break? 03:32:04

12 A. To the best of my knowledge, I don't know 03:32:08  
13 if he did or not. 03:32:10

14 Q. Do you know whether anybody at Applera had 03:32:11  
15 written documentation -- a written doctor's note 03:32:16  
16 specifying restrictions that you explained for us 03:32:19  
17 just before the break? 03:32:22

18 A. To my knowledge, no, none has been 03:32:23  
19 received. 03:32:26

20 Q. So at the time of the January 2006 03:32:35  
21 telephone conversation with Mr. Laosiri, how did 03:32:39  
22 you know what Ms. Kelly's restrictions are, the 03:32:42  
23 ones you explained to us before the break? 03:32:47

24 A. Because she had given them in a phone call 03:32:48  
25 to HR direct. 03:32:56

1           A. I do not know. 03:45:02

2           Q. What is the report, the annual report 03:45:08

3 you're referencing? 03:45:10

4           A. It's the EEOC reports. They're required, 03:45:11

5 I believe, every year. 03:45:19

6           Q. Do you have any information at all about 03:45:44

7 communications between Jonathan Laosiri and my 03:45:46

8 client Megan Kelly between the time frame of 03:45:50

9 September 2004 and January 2006? Actually, let's 03:45:53

10 make that the end of 2005, rather, so through 03:46:00

11 December of 2005. 03:46:04

12          A. No. 03:46:05

13          Q. So you have no information at all about 03:46:06

14 any communications between Jonathan Laosiri and my 03:46:07

15 client between September of 2004 and the end of 03:46:11

16 2005? 03:46:15

17          A. No. 03:46:17

18          Q. Does anyone to your knowledge at Applera 03:46:19

19 have knowledge about the communications between 03:46:22

20 Jonathan Laosiri and my client Megan Kelly between 03:46:25

21 the time frame of September of 2004 through the 03:46:29

22 end of 2005? 03:46:31

23           MR. PAETKAU: Objection. Lacks 03:46:33

24 foundation. Calls for speculation. Assumes facts 03:46:36

25 not in evidence. 03:46:38

25 BY MS. McFADDEN: 03:47:49

1 Q. Sure. Let me reask it. I asked you for 03:47:51  
2 your understanding, and you gave me an 03:47:54  
3 explanation. I want to make sure I've got your 03:47:55  
4 complete understanding. I wanted to see that you 03:47:58  
5 didn't leave anything out. 03:48:00

6 Have you told me everything that is your 03:48:02  
7 understanding as to what reasonable accommodation 03:48:04  
8 means? 03:48:05

9 MR. PAETKAU: Let me just object. The 03:48:06  
10 question calls for a legal conclusion. It's also 03:48:08  
11 overbroad. Vague and ambiguous.. 03:48:10

12 You can answer. 03:48:15

13 THE WITNESS: The other major portion of 03:48:18  
14 that is that in making that a reasonable 03:48:21  
15 accommodation, an employer is not required to do 03:48:24  
16 anything which would cause undue hardship on the 03:48:29  
17 employer. 03:48:32

18 BY MS. McFADDEN: 03:48:32

19 Q. So do I now have your complete explanation 03:48:41  
20 of what you understand that term to mean? 03:48:44

21 MR. PAETKAU: Same objections. The 03:48:45  
22 questions call for a legal conclusion. Vague and 03:48:47  
23 ambiguous. Overbroad. 03:48:51

24 THE WITNESS: What you have is the basics 03:48:53  
25 of what I know, the basic premise of a reasonable 03:48:56

1 accommodation. 03:49:03

2 BY MS. McFADDEN: 03:49:03

3 Q. And what is the basis of your 03:49:05

4 understanding? You gave me an explanation as to 03:49:11

5 what you understand reasonable accommodation to 03:49:13

6 mean. Where do you get that understanding from? 03:49:15

7 MR. PAETKAU: I just want to object to the 03:49:17

8 question as again calling for a legal conclusion 03:49:19

9 and attempting to invade the attorney-client 03:49:22

10 privilege, attorney work product. 03:49:24

11 And if any part of your answer would 03:49:25

12 reveal confidential communications with an 03:49:28

13 attorney or attorneys, I would instruct you not to 03:49:30

14 include that in your answer. 03:49:34

15 THE WITNESS: It would be based upon 03:49:39

16 discussions I have had with my supervisor, my 03:49:41

17 peers, who have had a variety of experiences and a 03:49:49

18 variety of training that I have attended. 03:49:53

19 BY MS. McFADDEN: 03:49:53

20 Q. Do you have an understanding of what the 03:50:00

21 term "interactive process" means? 03:50:01

22 MR. PAETKAU: Objection. Calls for a 03:50:04

23 legal conclusion. Vague and ambiguous. 03:50:07

24 THE WITNESS: Yes. 03:50:09

25 BY MS. McFADDEN: 03:50:09

1 Q. What does it mean? 03:50:11

2 MR. PAETKAU: Same objections. Legal 03:50:13

3 conclusion. Vague and ambiguous. 03:50:15

4 THE WITNESS: The interactive process is a 03:50:19

5 requirement for the employer to engage with an 03:50:23

6 employee with a medical condition to see if they 03:50:29

7 can make a reasonable accommodation. 03:50:33

8 BY MS. McFADDEN: 03:50:33

9 Q. And how did you come to have that 03:50:41

10 understanding as to what interactive process 03:50:43

11 means, leaving out any attorney-client privileged 03:50:45

12 information, of course? 03:50:48

13 A. As based upon conversations with my 03:50:49

14 supervisor, my peers, who have also had 03:50:51

15 circumstances regarding this type of action and 03:50:57

16 documents which I have read and seminars which I 03:51:00

17 have attended. 03:51:05

18 Q. Do you have an understanding as to what 03:51:10

19 triggers the interactive process? 03:51:11

20 MR. PAETKAU: Objection. Calls for a 03:51:13

21 legal conclusion. Vague and ambiguous. 03:51:15

22 Overbroad. 03:51:17

23 You can answer. 03:51:21

24 THE WITNESS: It can be triggered in a 03:51:25

25 variety of ways, either upon the request of the 03:51:26

1 employee or the start of -- or initiated by the 03:51:33  
2 employer, either one. 03:51:39  
3 BY MS. McFADDEN: 03:51:39  
4 Q. Anything else? 03:51:46  
5 MR. PAETKAU: Anything else? 03:51:47  
6 BY MS. McFADDEN: 03:51:47  
7 Q. Have you given me your complete 03:51:49  
8 explanation as to what triggers the interactive 03:51:51  
9 process? 03:51:55  
10 MR. PAETKAU: Objection. Calls for a 03:51:55  
11 legal conclusion. Vague and ambiguous. Overbroad 03:51:57  
12 in this context. 03:51:59  
13 You can answer. 03:52:01  
14 THE WITNESS: To the best of my knowledge, 03:52:02  
15 the answer is yes, I have. 03:52:03  
16 BY MS. McFADDEN: 03:52:03  
17 Q. Do you have an understanding as to what 03:52:07  
18 the phrase or term "essential functions of the 03:52:10  
19 job" means? 03:52:13  
20 MR. PAETKAU: Objection. Calls for a 03:52:15  
21 legal conclusion. Vague and ambiguous. 03:52:17  
22 Overbroad. 03:52:19  
23 THE WITNESS: Yes. 03:52:21  
24 BY MS. McFADDEN: 03:52:21  
25 Q. What does it mean? 03:52:25

1 MR. PAETKAU: Same objections. 03:52:27

2 Can we have -- just so I don't have to 03:52:29

3 repeat them every time, questions with legal terms 03:52:32

4 such as reasonable accommodations, essential 03:52:36

5 functions of the job, could I have a running 03:52:42

6 objection? 03:52:44

7 MS. McFADDEN: Yeah. This is the last 03:52:47

8 one. 03:52:48

9 THE WITNESS: Could you ask the question 03:52:48

10 again, please. 03:52:51

11 BY MS. McFADDEN: 03:52:51

12 Q. I believe you did have an understanding as 03:52:52

13 to what the term "essential functions of the job" 03:52:53

14 means. So I want to get your understanding of 03:52:57

15 what that means. 03:52:59

16 MR. PAETKAU: Same objections. Legal 03:53:01

17 conclusion. Overbroad. Vague and ambiguous. 03:53:02

18 THE WITNESS: Essential functions of the 03:53:04

19 job are exactly what it says. What are the basic 03:53:05

20 functions of this job, not the things that may be 03:53:10

21 done 5 percent or 10 percent. What are the major 03:53:14

22 functions of this job. 03:53:17

23 BY MS. McFADDEN: 03:53:26

24 Q. Is that your complete explanation of what 03:53:26

25 the term "essential functions of the job" is? 03:53:28

1 A. Yes. 03:53:33

2 Q. And where did you get that understanding 03:53:37  
3 from? 03:53:38

4 A. It comes from conversations with my 03:53:38  
5 supervisor, with my peers who have had cases in 03:53:40  
6 looking at these situations and with documents 03:53:43  
7 that I have read and seminars that I have 03:53:46  
8 attended. 03:53:48

9 Q. All right. I want to go over briefly any 03:53:51  
10 education and training you've received. Let's 03:53:55  
11 focus on specifically while you were at Applera 03:53:57  
12 first, and I want to specifically focus on the 03:54:01  
13 topic of disability discrimination and reasonable 03:54:03  
14 accommodation. 03:54:07

15 So focusing on that topic only, I want to 03:54:07  
16 hear about all the trainings you received at 03:54:10  
17 Applera. So let's start backwards in time, if we 03:54:11  
18 can. 03:54:14

19 When is the last training you've received 03:54:15  
20 that you can recall where -- scratch that. Let me 03:54:20  
21 reask that question. 03:54:24

22 Going backwards in time from today, when 03:54:25  
23 is the last time you received any training at 03:54:28  
24 Applera regarding disability discrimination and 03:54:30  
25 reasonable accommodation? 03:54:33

1 now. Let's go back to the last question and the 06:11:18  
2 answer, or there may not have been an answer. I 06:11:20  
3 don't remember. 06:11:24

4 THE WITNESS: Could you read it back, 06:11:25  
5 please. 06:11:27

6 (Record read.) 06:11:28

7 BY MS. McFADDEN: 06:11:28

8 Q. So let me just make sure I've got your 06:11:47  
9 answer clear. So you're not sure whether or not 06:11:49  
10 the ticket requested that you or Jamil do 06:11:52  
11 anything? 06:11:55

12 A. Without the ticket in front of me to see 06:11:55  
13 it, I don't remember. 06:11:58

14 Q. You're a higher level than Jamil, correct? 06:11:59

15 A. Correct. 06:12:01

16 Q. And when you received the ticket, you knew 06:12:02  
17 what to do, correct? 06:12:05

18 A. In most cases, I would know what to do. 06:12:06

19 Q. When you received this ticket, did you 06:12:13  
20 know what to do? 06:12:15

21 A. I believe so, but again, without it in 06:12:16  
22 front of me in the correct wording exactly what 06:12:19  
23 was asked, I'm not sure. 06:12:23

24 Q. Let's talk about what you did do. 06:12:25  
25 Actually, before we even do that, let's mark an 06:12:26

1 exhibit. This will be No. 1. 06:12:31

2 The court reporter is going to mark this, 06:12:34

3 and she'll give you a copy to review. And if 06:12:35

4 you'll just look that over briefly and I'll ask 06:12:38

5 you a question about that. 06:12:41

6 (Plaintiff's Exhibit No. 1 was marked for 06:12:42

7 Identification.) 06:12:59

8 BY MS. McFADDEN: 06:12:59

9 Q. For the record, we're marking as Exhibit 1 06:13:05

10 a document that has -- it's marked Kelly 0295 on 06:13:10

11 the bottom. It's Fremont Orthopedic Medical 06:13:15

12 Group, a note dated 1-20-06. 06:13:21

13 Have you seen this before, what we've 06:13:24

14 marked as Exhibit 1? 06:13:26

15 A. Yes. 06:13:30

16 Q. When did you first see it? 06:13:33

17 A. To my recollection, two days ago. 06:13:34

18 Q. Well, let's take a look at the 06:13:38

19 restrictions on this note, and it says, "Return to 06:13:39

20 work three days a week, working four hours a day. 06:13:42

21 Should be able to sit down every hour for ten 06:13:46

22 minutes. No lifting over 20 pounds." 06:13:48

23 Are those the restrictions as you 06:13:50

24 understood Ms. Kelly to have in January of 2006? 06:13:52

25 A. As I remember from what I saw on the 06:13:57

1 ticket, yes. 06:13:59

2 Q. Let's talk now about what you did in 06:14:09

3 response to getting the ticket. And by the way, 06:14:11

4 do you know how long after the ticket was 06:14:14

5 generated did you receive it? 06:14:16

6 A. Without the ticket in front of me, I can't 06:14:20

7 tell you. 06:14:23

8 Q. What did you do in response to getting the 06:14:24

9 ticket? I want to know everything you did. I'd 06:14:26

10 like to go in order, but if you don't know in 06:14:30

11 order, just tell me the best you can what you 06:14:33

12 recall. 06:14:34

13 MR. PAETKAU: Objection. Overbroad. 06:14:36

14 Calls for a narrative. 06:14:37

15 You can answer. 06:14:38

16 THE WITNESS: I remember having a 06:14:41

17 conversation with Mr. Laosiri, with Jonathan 06:14:42

18 Laosiri. 06:14:48

19 BY MS. McFADDEN: 06:14:48

20 Q. And is that the conversation you told me 06:14:52

21 about this morning? 06:14:53

22 A. Yes. 06:14:54

23 MR. PAETKAU: If you ask a broad question 06:14:55

24 like that, Maureen, you have to let him answer. 06:14:59

25 BY MS. McFADDEN: 06:14:59

1           A. Specifically ask her, I don't know. 06:31:58

2           Q. And do you know what happened to the 06:32:00

3 referral to health services about the fitness for 06:32:03

4 duty exam? 06:32:05

5           A. Yes. It is my understanding that 06:32:06

6 Dr. Wharton, who was part of health services, who 06:32:16

7 was a contract vendor, part of the vending, part 06:32:22

8 of the vendor group, did review whatever files, 06:32:28

9 information they had. But nothing -- it did not 06:32:34

10 go any further than that. 06:32:41

11          Q. Why didn't it go any further than that? 06:32:44

12          A. At that time, because he was actually 06:32:48

13 working with Workers' Comp. And so there was a 06:32:52

14 discussion about whether he should take on -- he 06:33:01

15 should do anything which was outside of Workers' 06:33:06

16 Comp. 06:33:08

17          Q. When you say he was working with Workers' 06:33:08

18 Comp, are you referring to Dr. Wharton? 06:33:11

19          A. Yes. 06:33:13

20          Q. So is the reason it didn't go any further 06:33:14

21 because there wasn't a Workers' Comp claim filed? 06:33:17

22          A. It was not -- the individual was not on 06:33:19

23 Workers' Comp. 06:33:23

24          Q. So is that the reason -- 06:33:24

25          A. Because remember she had now been out for 06:33:25

1 answered. 06:37:51

2 THE WITNESS: I don't know. 06:37:51

3 BY MS. McFADDEN: 06:37:51

4 Q. So other than that safety was one of the 06:37:59

5 three factors that he told you was one of the 06:38:01

6 reasons he couldn't accommodate her, do you know 06:38:06

7 anything more at all other than safety was 06:38:08

8 mentioned? 06:38:10

9 MR. PAETKAU: Objection. Asked and 06:38:11

10 answered. Misstates testimony. 06:38:12

11 THE WITNESS: I know that safety was the 06:38:14

12 prime reason. 06:38:16

13 BY MS. McFADDEN: 06:38:16

14 Q. Did he tell you safety was the primary 06:38:17

15 reason? 06:38:19

16 A. Yes. 06:38:19

17 Q. What did he tell you with respect to 06:38:21

18 safety being the primary reason? 06:38:22

19 A. I don't remember. I only remember that 06:38:23

20 among the issues, the various factors which we 06:38:27

21 have discussed, safety, the physical restrictions, 06:38:36

22 the time factor, that that was of critical 06:38:39

23 importance. 06:38:42

24 Q. And have you told me everything that 06:38:44

25 you're aware of that he said with respect to 06:38:48

1 excuse me. I can't do it because of the business. 06:41:36  
2 It's not that I don't want the person because 06:41:40  
3 they're too old or that I've had trouble with this 06:41:45  
4 person before and they're just not -- for reasons 06:41:49  
5 which are in most cases would probably be illegal. 06:41:52

6 I just have to be sure that he's making it 06:41:56  
7 for the right reasons. We are an at-will 06:41:59  
8 employer. So as long as he's making business 06:42:02  
9 decisions that are not prohibited by law, then 06:42:05  
10 that's fine. And I need to be sure of that to the 06:42:10  
11 best of my ability. 06:42:13

12 Q. As we sit here today, do you have any 06:42:16  
13 recollection specifically what you did to assure 06:42:19  
14 yourself that he was making decisions with proper 06:42:22  
15 business reasons? 06:42:26

16 A. Specifically, no. 06:42:27

17 Q. And as you sit here today, do you know 06:42:31  
18 whether you ever reached a conclusion that he was 06:42:34  
19 making his decisions for proper business reasons? 06:42:36

20 A. Yes. 06:42:39

21 Q. And the question was a "yes" or "no." So 06:42:42  
22 did you reach that decision? 06:42:45

23 A. Yes. 06:42:46

24 Q. So what was the -- was there a conclusion 06:42:50  
25 to this call in terms of what the next step would 06:42:53

1 be? 06:42:56

2 A. The next step would be to provide her with 06:42:56

3 an accommodation, and that was to allow her to 06:43:00

4 continue to remain on leave with receiving her 06:43:05

5 benefits from Unum and receiving her full benefit 06:43:08

6 package at no cost to her. That is an 06:43:12

7 accommodation. 06:43:15

8 Q. And is that something that you and 06:43:28

9 Jonathan Laosiri discussed in the telephone call, 06:43:29

10 that that was going to be the next step? 06:43:32

11 A. I don't remember. 06:43:36

12 Q. As you sit here today, you don't know 06:43:40

13 whether that was discussed at all? 06:43:41

14 MR. PAETKAU: With Mr. Laosiri in that 06:43:43

15 second telephone call? 06:43:45

16 BY MS. McFADDEN: 06:43:45

17 Q. Right, correct. 06:43:46

18 A. No, I do not remember. 06:43:47

19 Q. And do you remember ever having any 06:43:49

20 discussion with Mr. Laosiri about that? 06:43:51

21 MR. PAETKAU: That being the reasonable 06:43:54

22 accommodation, the paid leave or the leave of 06:43:57

23 absence? 06:44:00

24 BY MS. McFADDEN: 06:44:00

25 Q. Right. 06:44:01

1 BY MS. McFADDEN: 06:45:23

2 Q. Do you have any information at all about 06:45:32

3 what Mr. Laosiri did to reach his conclusion that 06:45:36

4 he couldn't accommodate Ms. Kelly? 06:45:44

5 A. No, I do not. 06:45:46

6 Q. Did you ever make any effort to find out 06:45:47

7 what he did to reach his conclusion that he 06:45:50

8 couldn't accommodate her? 06:45:54

9 A. Not to my recollection. 06:45:56

10 Q. To your knowledge, did anybody at Applera 06:46:04

11 make any effort to find out what Jonathan Laosiri 06:46:08

12 did in reaching his conclusion that he couldn't 06:46:11

13 accommodate Ms. Kelly? 06:46:14

14 A. I'm not privy to any such information. 06:46:15

15 Q. So have you told me about all the factors 06:46:50

16 that you're aware of that went into the 06:46:52

17 determination that Ms. Kelly could not be 06:46:56

18 accommodated as to the January 2006 work 06:47:01

19 restriction? 06:47:04

20 A. I've stated all of the information that I 06:47:06

21 can remember that you asked about. 06:47:09

22 MS. McFADDEN: And that's a different 06:47:15

23 question, so I need to have my question answered. 06:47:15

24 Let's reread it one more time. 06:47:18

25 (Record read.) 06:47:20

1 we're holding, the answer is yes. 07:02:58

2 Q. Do you have a recollection as to what it 07:03:00

3 is that you and Jamil discussed? 07:03:02

4 A. No recollection at all. 07:03:04

5 Q. Do you know whether you did have a 07:03:07

6 discussion with him other than that this paper 07:03:08

7 says so? 07:03:10

8 A. If it says we did, we did. 07:03:11

9 Q. So the line we were just talking about, 07:03:15

10 "Stefan, per our discussion, please refer to this 07:03:17

11 inquiry, thanks, JS," did Jamil enter that line 07:03:19

12 into the system on this ticket? 07:03:24

13 A. Yes. 07:03:26

14 Q. And the one that we read above that that 07:03:26

15 says LC, LC is a person who created that line and 07:03:28

16 entered into the system? 07:03:33

17 A. Correct. 07:03:34

18 Q. So let's look at the next line, and it 07:03:36

19 says, "Notified employee that we could not meet 07:03:43

20 the necessary accommodations," and it's got your 07:03:46

21 name, Stefan, 1-30-06? 07:03:48

22 A. Correct. 07:03:51

23 Q. And that means you entered that line? 07:03:52

24 A. Yes. 07:03:54

25 Q. And who notified the employee that we 07:03:54

1 could not meet the necessary accommodations? 07:03:58

2 A. To the best of my recollection, I did. 07:04:01

3 Q. When did you notify Ms. Kelly that Applera 07:04:04  
4 could not meet her accommodations? 07:04:08

5 A. It would have been 1-30. That is the 07:04:14  
6 reason it was dated that date. 1-30-06. 07:04:18

7 Q. Do you have a practice of as soon as you 07:04:28  
8 take an action, documenting it? Is that why you 07:04:29  
9 know it was the same day? 07:04:34

10 A. Even if I do it a different day, if I 07:04:35  
11 enter it in a different day, I will try to put the 07:04:37  
12 date on whatever it happened, whatever the action 07:04:40  
13 was taken, it's that date that I'll type on here. 07:04:46

14 Q. I see. So even if you didn't get around 07:04:50  
15 to entering it into the system until the next day, 07:04:53  
16 you would have put the previously if that's the 07:04:56  
17 day you called her? 07:04:58

18 A. Yes, that is correct. 07:04:59

19 Q. So do you have a specific recollection of 07:05:00  
20 telephoning Ms. Kelly and telling her the company 07:05:02  
21 could not meet the necessary accommodations? 07:05:06

22 A. I have a specific recollection of having 07:05:09  
23 the telephone call conversation with her, yes. 07:05:14

24 Q. And what did you tell her in that call? 07:05:19

25 A. That based upon her restrictions and our 07:05:22

1 concern for both her safety and the employees, 07:05:27  
2 other employees at the work site safety, we would 07:05:32  
3 not be able to meet her restrictions, however, she 07:05:36  
4 could remain out on leave, and that is the 07:05:39  
5 accommodation we would be able to make. 07:05:42

6 Q. You have a specific recollection of 07:05:57  
7 telling -- of mentioning safety to her in this 07:05:58  
8 call? 07:06:01

9 MR. PAETKAU: Objection. Asked and 07:06:02  
10 answered. 07:06:13

11 THE WITNESS: I have a specific 07:06:13  
12 recollection of having the call and the 07:06:14  
13 specific -- and remembering the specific points, 07:06:26  
14 no. 07:06:30

15 BY MS. McFADDEN: 07:06:30

16 Q. So as you sit here today, you don't know 07:06:32  
17 for sure whether or not you ever even used the 07:06:33  
18 word safety; is that fair to say? 07:06:36

19 A. That's fair to say. 07:06:39

20 Q. All right. And do you have a specific 07:06:41  
21 recollection of telling her in the call that she 07:06:44  
22 could stay out on leave, and that's the 07:06:49  
23 accommodation the company was granting her? Do 07:06:51  
24 you specifically remember telling her that? 07:06:53

25 A. I specifically remember having the call. 07:06:56

1 I don't specifically remember any of the items 07:07:01  
2 which I would have -- information which I would 07:07:07  
3 have conveyed to her other than the fact that we 07:07:10  
4 could not meet the requested accommodation. 07:07:13

5 Q. Okay. 07:07:19

6 MR. PAETKAU: Were you finished with your 07:07:20  
7 answer? 07:07:22

8 THE WITNESS: Yes. 07:07:23

9 BY MS. McFADDEN: 07:07:23

10 Q. How long was this telephone call with 07:07:24  
11 Ms. Kelly? 07:07:25

12 A. I believe it would have been relatively 07:07:26  
13 short. It may have been five minutes. It could 07:07:28  
14 have been ten minutes. It would not have been a 07:07:34  
15 lengthy conversation. 07:07:36

16 Q. Did you tell her it wasn't worth it for 07:07:39  
17 the company to bring her back? 07:07:41

18 A. Would you please ask the -- what was the 07:07:44  
19 statement, please. 07:07:46

20 Q. Did you tell Ms. Kelly that it wasn't 07:07:47  
21 worth it for Applera to bring her back for 12 07:07:51  
22 hours? 07:07:55

23 A. I never made that statement. 07:07:55

24 Q. Did you say anything similar to that? 07:07:57

25 A. To my recollection, no. 07:07:59

1 Q. Have you told me everything at all that 07:08:02  
2 you recall about what was said in the conversation 07:08:03  
3 with Ms. Kelly by you? 07:08:05

4 A. To the best of my recollection, yes. 07:08:19

5 Q. And what did Ms. Kelly say in the 07:08:21  
6 telephone call? 07:08:23

7 A. I have no specific memory of what she did 07:08:27  
8 say. 07:08:31

9 Q. Between the time of your second telephone 07:08:36  
10 call with Jonathan Laosiri where he told you he 07:08:38  
11 could not accommodate those restrictions and the 07:08:41  
12 time that you made the phone call to Ms. Kelly, 07:08:43  
13 how much time was there between those two events? 07:08:47

14 A. It would have been relatively short. 07:08:57  
15 Maybe a day or two, if even that. I don't 07:09:00  
16 specifically remember, but given the fact that I 07:09:07  
17 said I did this on the 30th and it would have been 07:09:15  
18 a week or a little more when we first knew, it had 07:09:23  
19 to be within a day or two of the conversation. It 07:09:31  
20 could have been actually been the same day. 07:09:36

21 Q. In between the time that you had the 07:09:39  
22 second telephone conversation with Jonathan 07:09:44  
23 Laosiri and the time that you telephoned 07:09:46  
24 Ms. Kelly, did you do anything at all with respect 07:09:48  
25 to reconsidering whether there was anything the 07:09:51

1 company could do to accommodate Ms. Kelly's work 07:09:53  
2 restrictions? 07:09:56

3 A. We were accommodating her. We were 07:09:57  
4 providing her with a continued leave of absence 07:09:59  
5 which at that point there was no requirement of 07:10:02  
6 the law for us to do that. 07:10:05

7 Q. Move to strike as nonresponsive and let me 07:10:07  
8 ask the question again a little differently. 07:10:09

9 Between the time of the second call with 07:10:12  
10 Mr. Laosiri and the time of the telephone call to 07:10:18  
11 Ms. Kelly, did you do anything at all other than 07:10:23  
12 anything you've already told me about to consider 07:10:31  
13 potential accommodations for Ms. Kelly's work 07:10:35  
14 restrictions? 07:10:37

15 A. Yes. 07:10:38

16 Q. What did you do during that time frame? 07:10:39

17 A. I considered what accommodations were 07:10:42  
18 possible. 07:10:45

19 Q. What did you do with respect to 07:10:47  
20 considering what accommodations were possible? 07:10:48  
21 This is just in the time frame between your second 07:10:50  
22 call with Mr. Laosiri and the telephone call you 07:10:53  
23 made to Ms. Kelly. So what did you do? 07:10:56

24 A. I considered what her work restrictions 07:11:00  
25 were, the safety issue and the factor of where she 07:11:02

1 worked, the work site and what would be possibly 07:11:12  
2 available at that work site and any other options 07:11:16  
3 which were the continued leave of absence. 07:11:24

4 Q. What did you do with respect to 07:11:27  
5 considering other jobs? 07:11:29

6 A. Based upon what her restrictions were, I 07:11:31  
7 did not see any other opportunities there because 07:11:36  
8 of the limited work force. 07:11:40

9 Q. When you say "because of the limited work 07:11:43  
10 force," what does that mean? 07:11:45

11 A. There are not that many employees out 07:11:48  
12 there, out in Pleasanton comparatively speaking to 07:11:50  
13 some of the other sites. 07:11:53

14 Q. Did she have to stay in Pleasanton? Did 07:11:54  
15 you consider whether he might work at other work 07:11:57  
16 sites for Applera? 07:12:00

17 A. No. 07:12:01

18 Q. Why not? 07:12:01

19 A. Because it would be an undue hardship on 07:12:01  
20 her to get there. 07:12:03

21 Q. And tell me how you reached the conclusion 07:12:04  
22 that it would be an undue hardship for her to get 07:12:07  
23 to another location? 07:12:10

24 A. Because given her physical restrictions, 07:12:11  
25 it was difficult, it was my understanding it would 07:12:13

1 be difficult for her to get to work. And she 07:12:15  
2 indicated that it is still difficult for her to 07:12:18  
3 get to work even today, since she's returned -- 07:12:20  
4 Q. Did you ever ask her -- 07:12:25  
5 A. I haven't finished answering your 07:12:27  
6 question. The other would be, which was actually 07:12:32  
7 the more important factor, was distance. Any 07:12:34  
8 other work site would be substantially further or 07:12:37  
9 she would have to cross a bridge. That's 07:12:44  
10 unreasonable, and it would not have been 07:12:48  
11 considered. We would not consider that. 07:12:50  
12 Q. And but you never asked Ms. Kelly whether 07:12:53  
13 going to a further work site further away would 07:13:02  
14 have been a burden to her? 07:13:05  
15 A. No. 07:13:06  
16 Q. Let's look at -- if we look at the -- 07:13:16  
17 let's look at the very bottom of Exhibit 2, under 07:13:19  
18 "progress." And then it says -- do you see that 07:13:21  
19 where it says "time open, 7 days, 5 hours, 43 07:13:26  
20 minutes"? 07:13:31  
21 A. Yes. 07:13:32  
22 Q. And then it says "closed on 1-31-2006." 07:13:35  
23 Does that mean that it had been open for the week 07:13:42  
24 prior to 1-31-2006? 07:13:44  
25 A. It may mean that, but it may not. Without 07:13:46

1 STATE OF CALIFORNIA )

2 )

3 COUNTY OF ALAMEDA )

4

5 I, ERIN F. FERREYRA, do hereby certify:

6 That GEORGE STEFAN LAZAR, in the foregoing  
7 deposition named, was present and by me sworn as a  
8 witness in the above-entitled action at the time  
9 and place therein specified;

10 That said deposition was taken before me at  
11 said time and place, and was taken down in  
12 shorthand by me, a Certified Shorthand Reporter of  
13 the State of California, and was thereafter  
14 transcribed into typewriting, and that the  
15 foregoing transcript constitutes a full, true and  
16 correct report of said deposition and of the  
17 proceedings that took place;

18 IN WITNESS WHEREOF, I have hereunder  
19 subscribed my hand this 3rd day of March 2008.

20

21

*Erin Ferreyra*

22

ERIN F. FERREYRA, CSR NO. 12199  
State of California

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